Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

RICKEY WALLACE AND LINDA ADAMS,

Petitioners,

v.

THE HONORABLE WILLIAM D. STIEHL,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did Judge Stiehl properly apply the constructive reasonable person standard of 28 U.S.C.A. § 455(a) in refusing to recuse himself?

2. Should Judge Stiehl have recused himself pursuant to 28 U.S.C.A. § 455(a) even though he learned that Petitioner Wallace was behind the murder plot through documents filed in the underlying judicial proceeding?

3. Would an objective outside observer question the propriety of Judge Stiehl continuing to preside over this case knowing that the United States Attorney's office directed the United States Marshal to deviate from security protocol in not telling Judge Stiehl who the source of the alleged murder threat was so that Judge Stiehl would not immediately recuse himself?

4. Should Judge Stiehl have recused himself pursuant to 28 U.S.C.A. § 455(a) on October 2, 1998 when he learned through the filing of Petitioners' Joint Motion for Disqualification or Recusal that Petitioner Wallace was the source of the murder threat?

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PETITION FOR WRIT OF CERTIORARI

The petitioners, Rickey B. Wallace and Linda Adams, respectfully pray that a writ of certiorari issue to review the decision of the Seventh Circuit Court of Appeals denying the Petition for Writ of Mandamus.

OPINIONS BELOW

The Honorable William D. Stiehl, U.S. District Court Judge, denied the Petitioners' Motion to Recuse on March 25, 1999 (Exhibit C). The order denying the Petition for Writ of Mandamus (Exhibit B) and the Petition for Rehearing En Banc (Exhibit C) are unpublished.

JURISDICTION

The Seventh Circuit Court of Appeals denial of the petitioners' timely petition for rehearing was filed June 9, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V United States Constitution.

STATEMENT OF THE CASE

This matter was originally assigned to the Honorable Paul E. Riley, who recused himself from the criminal

portion of this case, but continues to preside over the civil forfeiture proceeding.

When Judge Riley recused himself, the case was subsequently assigned to the Honorable William D. Stiehl who presided over Defendant Wallace's Change of Plea on February 3, 1998. Defendant Wallace subsequently filed a timely Motion to Withdraw Plea, which is presently pending before the Honorable William D. Stiehl. Defendant Linda Adams filed a Motion to Sever, which the Government objected to and was denied as being moot by Judge Stiehl which means that recusal of Judge Stiehl would apply to both Petitioners.

In early August of 1998, Defendant Wallace was accused of threatening to murder Judge Stiehl, and these threats were taken seriously by the Federal Bureau of Investigation and the United States Marshal who conducted interviews of Defendant Wallace on August 10, 1998. On August 7, 1998, Assistant U.S. Marshall Bill Presson went to advise the Honorable William D. Stiehl about the death threat, and five days later, on August 12, 1998 the Honorable James L. Foreman entered four Temporary Custody Transfer Orders in Petitioners' case.

The U.S. Attorney's office chose not to open a "miscellaneous remedy" file and instead chose to use the caption of *USA v. Rickey Wallace*, No. 97-30006-WDS, to allow Judge Forman to enter the aforesaid Orders in Petitioners' case. Around the time these Orders were entered, Petitioners believe that their file was in Judge Stiehl's chambers.

The murder threat continued to be investigated, and Petitioner Wallace was not "cleared" of the alleged threat

or murder charges, until the March 12, 1999 Hearing on Petitioners' Motion to Recuse.

On October 2, 1998, within five weeks of being put on a 24 hour protection detail, Judge Stiehl was made aware of the fact that Petitioner Wallace was the source of the murder plot due to the filing of Petitioners' Joint Motion for Disqualification or Recusal of the Honorable William D. Stiehl filed pursuant to 28 U.S.C.A. §§ 144 and 455(a) The Government responded to this Motion on October 21, 1998 and the Petitioners answered the Response two days later on October 23, 1998. Assistant Federal Public Defender Andrea Smith prepared an affidavit on February 12, 1999 which was filed with the district court on March 2, 1999. The Government provided affidavits from U.S. Marshal Terry Delaney and Assistant U.S. Marshal Bill Presson on the *day of the Hearing*.

The original Motion filed on October 2, 1998 was denied nearly six months later by an Order dated March 25, 1999. A Hearing was held on March 12, 1999 where the Honorable William D. Stiehl entered an Order denying relief under 28 U.S.C. § 144.

Petitioners presented evidence at the March 12, 1999 Hearing. United States Marshal Terry Delaney testified that while in other Districts a judge was not always told who the source of the threat was, that this was the first time that he was ever directed by the United States Attorney's office not to advise a judge who was making the threat, because the United States Attorney's office did not want Judge Stiehl to recuse himself from this case. United States Marshal Terry Delaney testified that while in other Districts a judge was not always told who the source of

the threat was, that this was the first time that he was ever directed by the United States Attorney's office not to advise a judge who was making the threat, because the United States Attorney's office did not want Judge Stiehl to recuse himself from this case.

The District Judge denied the Motion for Recusal on March 25, 1999. The petitioners filed a timely Petition for Writ of Mandamus in the Seventh Circuit Court of Appeals which was denied on April 9, 1999. The Petition for Rehearing En Banc was denied on June 9, 1999.

REASONS FOR GRANTING THE WRIT

I. Summary of reasons for granting the writ.

This Court should grant certiorari and review this case on the merits pursuant to Supreme Court Rule 10(a), because the Seventh Circuit Court of Appeals has entered a decision in direct conflict with the decisions of another United States court of appeals, specifically the Tenth Circuit Court of Appeals, and this Honorable Court on the same important matter. In addition, the Seventh Circuit has so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure as to call for an exercise of this Court's supervisory powers to require Judge Stiehl to recuse himself.

Judge Stiehl's refusal to recuse himself, and the Seventh Circuit's decision (Exhibits A & B) upholding this refusal directly contradicts the decision in *Nichols v. Alley*, 71 F.3d 347 (10th Cir. 1995), and *U.S.A. v. Greenspan*, 26 F.3d 1001 (10th Cir. 1994). In addition, Judge Stiehl's

decision and the Seventh Circuit's refusal to issue a Writ of Mandamus ignores *Liljeberg v. Health Services Acquisition Corporation*, 46 U.S. 47, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988) as well as *Liteky v. United States*, 510 U.S. 540, 553, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994).

Prior to the enactment of amended § 455(a), judges generally felt they had a "duty to sit," and the present version of § 455(a) was meant to eliminate this practice. *USA v. Balistrieri*, 779 F.2d 1191 (7th Cir. 1985) citing *Potashnick v. Port City Construction Co.*, 609 F.2d 1101, 1112 (5th Cir. 1980) shows this change by concluding that "under § 455(a), as amended, if there is any question of impropriety a judge should exercise his discretion in favor of disqualification." In *Balistrieri* the Defendant moved on four separate occasions to have the judge recuse himself, and when the judge finally decided to recuse himself he categorically denied the allegations raised by Defendants, but his recusal was based on what he felt a reasonable person might find to be an appearance of partiality. Surely, if the judge in Balistrieri felt that a reasonable person could find an appearance of partiality with regards to the claims made by Defendant, then a causal observer would conclude that Judge Stiehl, who was the target of a murder threat, would be biased against the source of that threat.

In order to recuse himself pursuant to § 455(a), the moving party does not have to show that the judge is *subjectively* biased or prejudiced, and the *appearance of* prejudice or bias is sufficient. *Liteky v. United States*, 510 U.S. 540, 553, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994) (emphasis added). In this case, the mere fact that Judge Stiehl *knew for almost six months that Petitioner Wallace was*

the source of the murder threat would be enough to cause a casual observer to think that any opinion Judge Stiehl rendered would be biased against Petitioner Wallace and Petitioner Adams.

Judge Stiehl's order denying the Motion to Recuse (Exhibit C) completely ignores the nearly six-month time period in which he was clearly aware that Petitioner Wallace was the alleged source of threats. At page 6 of his March 25, 1999 order, Judge Stiehl states "these defendants have not been linked, so far as this Judge knows, to that threat nor identified as sources of that threat." Similarly, on page 2 of this order, he writes that *United States v. Greenspan*, 26 F.2d 1001 (10th Cir. 1994) is inapplicable because "this Judge was, and is, unaware of the source of the alleged threat." The use of the word "is" makes Judge Stiehl's entire order contrary to everything which was adduced at the March 12, 1999 Hearing (Exhibit G) and Motions (Exhibits D, E, & F), where the Government *never* disputed that Petitioner Wallace was the source of the alleged threat. Obviously, the October 2, 1998 filing of the Motion to Recuse would have placed Judge Stiehl on notice, and the judge assuredly knew who the source of the murder threat was at that time.

This Honorable Court in *Liteky* at page 564 concluded that one of the very objects of the American judicial system is the impartiality of the judiciary in fact and appearance, and stated that the standard which should be adopted for any allegation of predisposition, be it extrajudicial or intrajudicial, follows from the statute itself. *Liteky* went on to say that "disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude

or state of mind leads a ***detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified.***" (Emphasis added). Justice Kennedy concluded (page 564) that in circumstances where a judge's impartiality could be questioned by a detached observer that "I think that any judge who understands the judicial office and oath would be the first to insist that another judge hear the case."

By denying Petitioners' Petition for Writ of Mandamus, the Seventh Circuit Court of Appeals contradicts its own jurisprudence. In *In The Matter of Jeffrey Hatcher,* 150 F.3d 631 (7th Cir. 1998) concluded that,

> an objective standard creates problems in implementation, because judges must imagine how a reasonable, well-informed observer of the judicial system would react . . . ***drawing all inferences favorable to the honesty and care of the judge whose conduct has been questioned could collapse the appearance of impropriety standard under § 455(a) into a demand for proof of actual impropriety.*** (emphasis added) *Hatcher,* at 150 F.3d 637.

Had it followed its *Hatcher* decision, the Seventh Circuit Court of Appeals *would not* have been in conflict with the Tenth Circuit Court of Appeals.

In *Hatcher,* the appearance of bias complained of consisted of the judge sitting in a courtroom a few times to watch his son who was an intern with the U.S. Attorney's office in a case which was related to a case which the judge eventually presided over. It is not a quantum leap in logic for this Court to conclude that a judge whose life has been threatened, and whose family has been put

on an around the clock watch by the U.S. Marshal, could be prejudiced and biased against the source of the threat, and by properly applying the constructive reasonable person standard it is evident Judge Stiehl should have recused himself on October 2, 1998 or as soon thereafter as possible to avoid the appearance of bias.

Even if an alleged murder plot could lead a reasonable person to be unsure as to whether or not Judge Stiehl should have recused himself on October 2, 1998, *Hatcher* is clear that by remaining on the case Judge Stiehl would create an appearance of impropriety, and he therefore should be ordered to recuse himself.

The judge originally assigned to hear the Oklahoma City bombing case refused to recuse himself, and in *Nichols v. Alley*, 71 F.3d 347 (10th Cir. 1995), the Tenth Circuit granted the Petitioner's Petition for Writ of Mandamus and concluded that "if the question of whether § 455(a) requires disqualification is a close one, the balance tips in favor of recusal," (at 71 F.3d 352), which is in direct conflict with the Seventh Circuit Court of Appeals' refusal to grant the Petition for Writ of Mandamus.

The Government has previously argued that by learning of the murder plot through documents filed in the underlying proceeding, Judge Stiehl's knowledge is not "extrajudicial," and therefore he is not required to recuse himself. In arguing this position, no reference is made to the seminal case discussing what constitutes an extrajudicial source. *Liteky v. United States*, 510 U.S. 540, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994) which held that there is no per se rule requiring that the alleged partiality of a judge arise from an extrajudicial source.

Here, Judge Stiehl disqualified Petitioner Wallace's previous attorney as a result of the attorney and Petitioner Wallace allegedly threatening witnesses. Judge Stiehl truly believed that Petitioner Wallace was a dangerous person as witnessed by his June 9, 1998 Order, where on page 3 footnote 3 he stated:

> ***Specifically, agent Rentfro testified that the Diaz family had been told that if Ubaldo Diaz, II, testified his arm would be "delivered" to the Diaz family.***

As seen in the attached excerpts from Agent Rentfro's testimony (Exhibit H), Agent Rentfro testified (page 45) that "harm would come to the Diaz family." Further, at page 53 of the transcript, Agent Rentfro clearly testified that the threats were "just generalized as harm was the word that was used."

So, prior to being told of the murder plot against him, Judge Stiehl already had in his mind without any facts revealed in open Court to support the conclusion that Petitioner Wallace was a dangerous person. When he learned a mere six weeks after being told that there was a plot to murder him and that this dangerous individual who cut people's arms off was behind the murder plot, and this created a condition for bias or prejudice which under *Liteky* would cause Judge Stiehl to recuse himself. Justice Kennedy concurred in *Liteky* and stated on page 557 that "placing too much emphasis upon whether the source is extrajudicial or intrajudicial distracts from the central inquiry." The central inquiry here is whether or not knowing for nearly six months that Petitioner Wallace was the source of a murder plot would cause a reasonable

person to conclude that Judge Stiehl would be biased and the answer is "yes."

Regardless, the ***threat*** and ensuing investigation are extrajudicial, *USA v. Greenspan*, 26 F.3d 1001 (10th Cir. 1994) and accordingly Judge Stiehl should have recused himself once he learned who the source of the murder threat was.

In *Greenspan*, the presiding judge was told of a murder plot against him which like here was taken seriously by all involved, yet just as in the case at bar the presiding judge in *Greenspan* refused to recuse himself, and the Court concluded at 26 F.3d 1007 that "even if this judge were one of those remarkable individuals who could ignore the personal implication of such a threat, the public reasonably could doubt his ability to do so."

There is no doubt that it would be difficult for any judge to conclude that he would be biased, but the central inquiry under § 455(a) is the appearance of partiality rather than the place of its origin, and "if through obduracy, honest mistake, or simple inability to attain self knowledge the judge fails to acknowledge a disqualifying disposition or circumstance, an appellate court must order recusal no matter what the source." *Liteky*, at 563.

In its Response to Petitioner's Motion to Recuse and at the March 12, 1999 Hearing the Government and Judge Stiehl in his March 25, 1999 order hypothesize that an accused in order to get a new judge could make a threat against a judge. This was addressed and dismissed in due fashion by both *Liteky* and *Greenspan*.

As an initial matter, no facts were presented whatsoever which would lead the court to the conclusion that Petitioner Wallace purposefully made a threat in order to force the recusal of Judge Stiehl. This case, as in *Greenspan*, revolves around an accusation of a threat which was by its very nature intended not to be communicated directly to the court. As the *Greenspan* court noted at 26 F.3d 1007, "an uncommunicated threat will, by definition, not be an effective recusal device . . . threats against judges are serious crimes, and any such ploy would likely result in further ancillary prosecution against the defendant in a way that may significantly multiply his or her problems with the law."

Similarly, in this case it is clear that the alleged threat was not made under circumstances that would make it likely that the threat was intended as a device to obtain a recusal, since among other things, Petitioner Wallace was placed in solitary confinement for 25 days. Petitioner Wallace's alleged threats were made in a jail cell to a Government witness. Likewise, the investigation took several weeks and a number of people at the federal courthouse in East St. Louis were directly or indirectly aware that Petitioner Wallace was the source of the alleged threats.

Liteky and *Greenspan* both show that ***how*** Judge Stiehl learned of the murder threat is not what needs to be focused on; rather, the focus of the inquiry is whether or not a reasonable person outside the judicial system could possibly conclude that Judge Stiehl could remain unbiased, and the Seventh Circuit's refusal to grant the Petition for Writ of Mandamus conflicts with both *Liteky* and *Greenspan*.

Judge Stiehl's March 25, 1999 Order speculates about other defendants who would set up a false straw-man and knock it down with affidavits such as those presented in this case. Quite simply, this hypothetical completely misstates and misapplies the facts presented. Judge Stiehl states on pages 5 and 6 that:

> anytime a defendant did not like a judge or his rulings, all the defendant need do is drop a suggestion, or have someone else claim, that there was a threat against that Judge. Thereafter, the defendant could knock down his straw-man by both denying any involvement in the threat to and at the same time claiming that because of the mere existence of the threat, the judge was to biased or prejudiced against the defendant to remain on the case.

Judge Stiehl went on to conclude that just as in *Greenspan*, one of the Petitioners' objectives, was to use the opportunity of an alleged threat to make recusal mandatory.

The Seventh Circuit's refusal to grant the Writ of Mandamus further conflicts with *Greenspan*, which held that just because a death threat is made against a judge, it does not necessarily follow that the judge will have to recuse himself under § 455(a).

Judge Stiehl's order of March 25, 1999 concludes that Petitioners' Motion to Recuse "smacks of forum shopping." Petitioners only desire is to have their case heard by a judge who has not previously made erroneous conclusions that Petitioner Wallace would deliver arms to potential witness' families, and Petitioners desire to have their case heard by a judge who has not labored for nearly six months under the belief that one of them had

threatened to initiate an assassination plot against him. That desire is not forum shopping. It is a request for impartial justice. Petitioners submit that it matters not to them which judge hears this case, so long as it is not one who has been tainted by a murder threat.

The converse is true of the hypothetical regarding motives for recusal and the claim of forum shopping. The Government in this case selectively directed the United States Marshal ***not*** to tell a particular judge who the source of a death threat was so that if the accused person filed a Motion to Recuse the Government could claim that the information was not extrajudicial and therefore the judge would not be forced to recuse himself. Alternatively, if there were a particular judge that the Government, for whatever reason, did not want to hear the case, it could direct the United States Marshal to tell that judge who the source of the threat was so that the case could be transferred to another judge. One has to question the motives of the United States Attorney's office in this particular case, insofar as in the Southern District of Illinois this is the ***first time*** in twelve prior threats that Marshal Delaney was directed not to tell a judge who the source of the threat was because the Government did not want Judge Stiehl to have to recuse himself. A more textbook example of forum shopping cannot be found.

The United States Attorney's office, by purposefully omitting information that was provided on twelve other occasions to sitting federal district judges, is explicitly choosing its forum for decision this case. This choice was unilaterally made by the United States Attorney and by definition was made by the executive branch of the Government. By omitting information, the United States

Attorney's office is in fact violating the separation of powers in that its decision to omit the source of the alleged threats dictates which judge should preside over this case and in effect how the judicial branch should operate.

It is axiomatic that justice not only be impartial, but also that it must reasonably be perceived to be impartial. Not only would a reasonable person question Judge Stiehl's impartiality in light of his knowledge that an investigation was being conducted into alleged death threats against him by Petitioner Wallace, but public confidence in the integrity of the judicial process is also brought into question when one of the parties to this proceeding has unilaterally decided which facts can be made known to the Court.

Nowhere does the Government or Judge Stiehl mention *Liljeberg v. Health Services Acquisition Corporation*, 46 U.S. 47, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988) which involved a judge who did not realize that he had a conflict until ***after the proceedings concluded*** when one of the parties filed a post trial Motion indicating that the trial judge had a conflict of interest and should have recused himself. This Honorable Court held that even though Judge Collins had no actual knowledge at the time he entered his decision, since his impartiality might reasonably have been questioned he should have recused himself. In this case, within five weeks after his 24-hour protection detail ended, Judge Stiehl knew that the source of the murder threat was Petitioner Wallace, and any contention that the timing of Judge Stiehl's knowledge prohibits him from recusing himself is simply contrary to the holding in *Liljeberg*.

There are two relevant time periods in this case, namely, the six-week period from the beginning of August 1998 until October 1, 1998 when Judge Stiehl was aware of the murder threat, but was not told who the source of the threat was due to the Marshal being directed not to tell him, and the nearly six-month period from the October 2, 1998 filing of Petitioners' Motion to Recuse until the March 12, 1999 Hearing. During this nearly six-month period, it festered in Judge Stiehl's mind that Petitioner Wallace was the person that caused discomfort to himself and his family, and the ensuing fear that goes along with this, especially considering the fact that in his June 9, 1998 Order Judge Stiehl realized that because of prior threats allegedly made, Petitioner Wallace was a dangerous person.

Under § 455(a), the appearance of impartiality is the relevant consideration, and it is improper to focus on where the impartiality or bias originated or how it was disclosed. Whether or not Judge Stiehl had actual knowledge that Petitioner Wallace had threatened his life during this short six-week interval is irrelevant, since a reasonable person could conclude that Judge Stiehl could have known who the source of the threat was. The facts in this case lead to this conclusion, especially since Petitioners' file was in Judge Stiehl's chambers when the Transfer Orders were entered by another judge.

Liljeberg also held that recusal of a federal judge is required even though the judge lacks actual knowledge of the facts indicating that judge's interest or bias in the case "if a reasonable person, knowing all the circumstances would expect that the judge would have such actual knowledge" and under the *Liljeberg* standard, this Court's

focus should be on the six-month period that Judge Stiehl truly knew who the source of the murder threat was, rather than on the short period of time that Petitioners waited for Judge Stiehl to recuse himself sua sponte.

When discussing violations of § 455, this Honorable Court in *Liljeberg* looked at the risk of undermining the public's confidence in the judicial process, and concluded that a Court, in making such a determination "must continuously bear in mind" that "in order to perform its function in the best way, justice must satisfy the appearance of justice." The Government and Judge Stiehl's argument concludes that scienter is a prerequisite before § 455(a) is triggered, and this is simply against the holding in *Liljeberg*, at 100 L.Ed.2d 849, since a scienter requirement would contravene § 455(a)'s language and purpose of promoting public confidence in the integrity of the judicial system. There would be absolutely no appearance of justice if a judge, who allowed a bias like this to fester in his mind for six months, were not required to recuse himself, because again a casual observer would objectively conclude that Judge Stiehl could not be partial to Petitioners.

Section 455(a) was enacted to promote public confidence in the integrity of the judicial process, which does not depend upon a judge's actual knowledge, and *Liljeberg* addressed the concept of retroactivity when on page 860 it held that "in proper cases, (§ 455 can) be applied retroactively," and that "the judge is not called upon to perform an impossible feat. Rather, he is called upon to rectify an oversight and to take the steps necessary to maintain public confidence in the impartiality of the judiciary." *Liljeberg* goes on to say at 100 L.Ed.2d 864

that "people who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges." As has been stated throughout this Petition the standard is what an objective "outsider" would think, and *Liljeberg* supports the position that pursuant to § 455(a) Judge Stiehl should have recused himself when he learned on October 2, 1998 that Petitioner Wallace was the source of the murder threat.

CONCLUSION

Judge Stiehl cannot be viewed by any observer under any circumstances as someone who could impartially preside over Petitioners' case. The Seventh Circuit's refusal to grant a Writ of Mandamus ordering Judge Stiehl to recuse himself is at odds with the Tenth Circuit and with the jurisprudence of this Honorable Court. As such, Petitioners pray that this Honorable Court grant Certiorari and decide the merits of this Petition.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	CRIMINAL NO. 97-30006-wds
RICKY [sic] WALLACE and LINDA ADAMS,	)	(Filed March 25, 1999)
Defendants.	)	

MEMORANDUM AND ORDER

STIEHL, District Judge:

This matter is before the Court on defendants' joint motion for disqualification or recusal, to which the government has responded and defendants have replied. The Court has previously denied that portion of defendants motion which seeks recusal under **28 U.S.C. § 144.** The matter was then called for hearing on the remainder of defendants' motion which seeks disqualification under **28 U.S.C. § 455,** and the Court took the matter under advisement.

Section 455(a) provides for disqualification of a judge "in any proceeding in which his impartiality might reasonably be questioned," and is the more general "open-ended standard." ***Matter of Hatcher,* 150 F.3d 631, 637 (7th Cir. 1998). Section 455(b)** provides specific instances where disqualification is warranted. "The standard in any case for a § 455(a) recusal is whether the judge's impartiality could be questioned by a reasonable, well-informed observer." *Id.* In ***Hook v. McDade,* 89 F.3d 350, 354 (7th Cir. 1996)** the court stated that **§ 455(a)** "asks

whether a reasonable person perceives a significant risk that the judge will resolve the case on a basis other than the merits. This is an objective inquiry." **(Citations omitted.)** ***See also Liteky v. United States*, 510 U.S. 540, 548 (1994)** where the Court stated "what matters is not the reality of bias or prejudice but its appearance."

With respect to the **§ 455(a)** consideration, defendants rely upon the holding in a Tenth Circuit opinion, ***United States v. Greenspan*, 26 F.3d 1001 (10th Cir. 1994).** In that case, the court held that the district judge should have recused himself under **§ 455(a)**, because he had been advised by the F.B.I. that a defendant he was about to sentence had been involved in a conspiracy to threaten the judge. ***Id.* at 1006.** This case offers little to the defendants, however, because here the record is clear that, unlike the judge in ***Greenspan*,** this Judge was, and is, unaware of the source of the alleged threat.

Greenspan notes that "a judge has as much obligation not to recuse himself where there is no reason to do so as he does to recuse himself when the converse is true." ***Id.* At 1005.** The court further stated that "threats or attempts to intimidate a judge will not ordinarily satisfy the requirements for disqualification under section 455(a)." ***Id.* at 1006.**

In further support of their motion, defendants have tendered the affidavit of Assistant Federal Public Defender Andrea Smith with respect to activities of one of her clients in the threat investigation. She asserts, essentially, that various members of the court and the Marshals Service knew of the alleged source of the threat.

She does not, and could not, state that this Judge knew of the source of the alleged threat.

In this case, the defendants assert that although Wallace did not make any threats against this Judge, there is an appearance of bias because one would be lead to believe that Wallace was involved in the alleged threat based on the existence of temporary custody writs in the Court file signed by Judge Foreman, and the knowledge of members of the Marshals Service and other judges as to the source of the threat. The defendants have not, however, established anything more than their own speculation that this Judge knew and therefore may be prejudiced against them. In light of the denials by Wallace of responsibility for any alleged threat, and the lack of anything more than pure speculation as to this Court's possible bias or prejudice, the Court cannot find that the defendants have established that they are entitled to disqualification under the general provisions of **§ 455(a)**. The Court adopts its prior findings with respect to the defendants' motion under **§ 144**, and **FINDS** that because the defendants have not set forth sufficient grounds which would establish the appearance of bias or prejudice to warrant disqualification under **§ 455(a)**,the Court is obligated to deny the motion on this ground.

The defendants also seek disqualification under the provisions of **§ 455(b)(1)** which states that a judge shall disqualify himself: "Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." Following ***Liteky,*** the court in ***Edgar v. K.L.,*** **93 F.3d 256 (7th Cir. 1996)** determined that the distinction between " 'personal knowledge' and knowledge that is gained in a

judicial capacity is that information from the latter source enters the record and may be controverted or tested by the tools of the adversary process." ***Id.*** **at 259.** In ***Hatcher,*** the court held what the district judge observed when watching a related case being tried before another judge did not amount to "personal knowledge" because the judge "learned nothing about the Gangster Disciple conspiracy that any member of the public could not also have learned by attending the trial or reading a good newspaper account of its progress." **150 F.3d at 635.** Further: "This limited exposure is not the kind of *personal* knowledge of disputed evidentiary facts with which § 455(b)(1) is concerned." ***Id.*** Disqualification under **§ 455(b)(1)** is "directed to the judge and is self-executing. It requires the judge to disqualify himself if he has a personal bias or prejudice concerning a party." ***Balistrieri,*** **799 F.2d at 1202.**

Here, the allegations of bias or prejudice stem from the defendants' perception that this Judge either a) knew of the source of the threat, or b) if not known specifically, gleaned the identity of the source of the threat from the filing of temporary custody orders in this case. As the government has noted in its response, this Court sees temporary custody orders on a regular, if not daily basis. The motions and accompanying orders do not specify the basis for the temporary custody writ request, other than to state that the witness is needed for interviewing in an ongoing investigation. Of the four motions for writs presented to Judge Foreman only one was for defendant Wallace.

Not until the filing of this motion and these affidavits did this Judge have any information that would indicate

that defendant Wallace was in any way investigated in connection with the alleged threat. It is an unfortunate but true statement that part of the job of being a federal judge is to be subjected to comment and even criticism for the rulings the judge makes. Sometimes those criticisms take the form of threats. It is the duty of the United States Marshals Service to protect the Court, and, in conjunction with the Federal Bureau of Investigation, to determine the seriousness of any and all threats leveled against federal judicial officials. It is the duty of the Court to proceed with the business of the Court, despite any threat which may have been made.

The threat which was allegedly made last summer was not the first threat made in this district against a judge. When the threat was relayed to this Judge, the United States Marshals Service informed the Court that it had received information about a possible threat, and needed to assess the threat potential. An investigation was then commenced by the FBI and the United States Marshals Service. At no time was this Judge advised of the source of the threat, nor the details of the threat. The Court was not informed of the details of the investigation, nor its focus. The United States Marshals Service and the FBI conducted themselves in an efficient and totally professional manner, and determined in only a matter of about a week that the threat potential was minimal, and that no further action was required. Throughout the investigation, the source was not revealed to this Judge, and in fact, the source of the threat has never been disclosed.

Wallace has, in his motion and affidavit, denied that he made any threats or was connected to any threats.

Nonetheless, defendants want this Judge to do something that he has not done to this point, and that is to surmise that Wallace was a likely source of the threats, based solely on routine writs issued in this case, and then find that this speculation amounts to a prejudice that warrants disqualification. Although Wallace denies it, this motion clearly smacks of forum shopping. If the Court were to give credence to this straw-man argument, then anytime a defendant did not like a judge or his rulings, all the defendant need do is drop a suggestion, or have someone else claim, that there was a threat against that judge. Thereafter, the defendant could knock down his straw-man by both denying any involvement in the threat, and at the same time claiming that because of the mere existence of the threat, the judge was too biased or prejudiced against the defendant to remain on the case.

As the Court stated in ***Greenspan,*** "if a judge concludes that recusal is at least one of the defendant's objectives (whether or not the threat is taken seriously), then section 455 will not mandate recusal because that statute is not intended to be used as a forum shopping statute." **25 F.3d at 1006.**

The Court **FINDS** that the defendants have failed to establish, and the record simply does not support, grounds for a finding that this Court has learned of any matters related to evidence in controversy in this case which would result in any prejudice or bias of this Judge against either of the defendants Wallace or Adams. ***Liteky,*** **510 U.S. at 549-550.** The Court has no bias or prejudice against either defendant based on an alleged threat made against this Judge in 1998, as these defendants have

not been linked, so far as this Judge knows, to that threat nor identified as sources of that threat.

In light of the record before the Court, defendants' joint motion for disqualification under **§ 455(a)** and **§ 455(b)(1)** is **DENIED** on all grounds.

IT IS SO ORDERED.

DATED: 25 March 1999

William D. Stiehl
DISTRICT JUDGE

United States Court of Appeals *nh*

For the Seventh Circuit
Chicago, Illinois 60604

April 9, 1999

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*

Hon. DANIEL A. MANION, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

IN RE:	] Application for Writ of Mandamus
RICKEY B. WALLACE and LINDA SUE ADAMS,	] Southern District of Illinois, East St. Louis Division.
Petitioners.	] No. 97 CR 30006
No. 99-1745	] William D. Stiehl, Judge.

The following are before the court:

1. **PETITION FOR WRIT OF MANDAMUS**, filed on April 1, 1999, by counsel for the petitioners.

2. **MOTION TO STAY DISTRICT COURT PROCEEDINGS**, filed on April 1, 1999, by counsel for the petitioners.

IT IS ORDERED that #1 is **DENIED** and #2 is **DENIED** as moot.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

June 9, 1999.

Before

Hon. WILLIAM J. BAUER, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

Hon. MICHAEL S. KANNE, Circuit Judge

RICKEY B. WALLACE & LINDA ADAMS, Petitioners,	)	Appeal from the United States District Court for the Southern District of Illinois.
No. 99-1745 v. THE HONORABLE WILLIAM D. STIEHL, Respondent.	)	Eastern Division No. 97-CR-30006-WDS **William D. Stiehl**, *Judge.*

ORDER

On consideration of the petition for rehearing with suggestion for rehearing en banc filed in the above-captioned case by the petitioners and the response thereto, all of the judges on the original panel have voted to deny and none of the judges in active service has requested a vote thereon.

Therefore, the petition for rehearing with suggestion for rehearing en banc is DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	No. 97-CR-30006-WDS
v.	)	***FILED UNDER SEAL***
RICKY [sic] WALLACE and LINDA SUE ADAMS,	)	(Filed Oct. 2, 1998)
Defendants.	)	

DEFENDANTS' JOINT MOTION FOR DISQUALIFICATION OR RECUSAL OF THE HONORABLE WILLIAM D. STIEHL FILED PURSUANT TO 28 U.S.C.A. §§ 144 and 455

Come now Defendants Ricky [sic] Wallace and Linda Adams, by and through their respective attorneys, John J. O'Gara, Jr. and John D. Stobbs II, and respectfully move this Honorable Court pursuant to 28 U.S.C.A. §§ 144 and 455(a) to enter an Order transferring this case to the Chief Judge for reassignment to another judge or in the alternative for U.S. District Judge William Stiehl to recuse himself and in support thereof, state:

1. Attached hereto made a part hereof and marked Exhibits A and B are Affidavits sworn to by Defendants which are in compliance with § 144 of Title 28 United States Code and these affidavits set out their reasons for this Motion as it applies to § 144.

2. This Motion is timely filed, and pursuant to § 144 the undersigned certify that it is made in good faith

(Exhibit C) and in accordance with *USA v. Greenspan*, 26 F.3d 1001 (10th Circuit 1994).

3. With regard to 28 U.S.C. § 144, the attached Affidavits alone are sufficient to show that in Defendants' minds, this Honorable Court would have a personal bias or prejudice against them as a result of the unfounded allegation that a threat had been made on Judge Stiehl's life by Ricky [sic] Wallace.

4. The attached Affidavits were filed only after the Government filed a flurry of Temporary Custody Transfers in ***this*** case, which were entered on August 12, 1998 (See Exhibits D, E, F and G), A reasonable person going through this file would have to wonder why these four individuals, three of whom were cooperating Government witnesses were transferred to the custody of the Federal Bureau of Investigation and if a reasonable person knew that a "hit" had been put out on a federal judge that person could reasonably conclude the identity of the individual making the threat. So, the Affidavits are not being filed to "forum shop," but rather have been filed only after the United States of America instituted an investigation into the threats against the life of the sitting District Judge in this matter.

5. With regards to 28 U.S.C. § 455(a) which states "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned," the focus is on the ***appearance of impartiality,*** *Potashnick v. Brunson*, 609 F.2 1101 (5th Circuit 1980), and understandably if an alleged threat is made on someone's life, that person's

impartiality for trial or sentencing could come into question.

6. Defendants believe that a reasonable person with knowledge of the alleged threat on Judge Stiehl's life might very well question the impartiality in a trial involving the Defendants and under 28 U.S.C.A. § 455(a), Judge Stiehl should recuse himself.

7. The amendment to 28 U.S.C. § 455 requires a "judge to exercise his discretion in favor of disqualification if he has any question about the propriety of sitting in a particular case," which differs from the prior statute which urged the judge to resolve a close question in favor of a "duty to sit." (See *Potashnick* page 1112) In other words, if it is a "close" call, the judge should rule in favor of recusal rather than remaining on the case.

8. The allegations of threats which have been made are of an extrajudicial source which creates a situation where the Court's impartiality might reasonably be questioned, and the undersigned again note that Mr. Wallace continues to vehemently deny that he made ***any*** threats at all.

9. The concern is that because Mr. Wallace has been the focus of an investigation regarding a threat made on the sitting judge's life, the Court could be prevented from ignoring the personal implications of the alleged threats, or at the very least from Mr. Wallace's and Ms. Adams' perspective as well as that of the public, the court's impartiality might reasonably be questioned.

10. The allegations of the threat, moreover, came from other individuals who were allegedly working in

consort with the Government for future cooperation benefits which would become known at trial or sentencing and could cause the Court to look unfavorably upon Mr. Wallace and by implication upon Ms. Adams.

WHEREFORE, Defendants request that this case be transferred to Chief U.S. District Court Judge J. Phil Gilbert for reassignment or in the alternative for U.S. District Court Judge William Stiehl to recuse himself from this matter.

RICKY [sic] WALLACE

O'GARA LAW OFFICES

BY: /s/ John J. O'Gara, Jr.
John J. O'Gara, Jr.
Attorney for Defendant Wallace
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FAX: (618) 234-0670

LINDA SUE ADAMS

STOBBS LAW OFFICES

BY: /s/ John D. Stobbs II
John D. Stobbs II,
NO. 06206358
Attorney for Defendant Adams
346 West St. Louis Avenue
East Alton, Illinois 62024
Telephone: (618) 259-7789
FAX: (618) 259-4145

CERTIFICATE OF SERVICE

The undersigned certifies that on the 2 day of October, 1998, a copy of the attached ***Defendants' Joint Motion for Disqualification or Recusal of the Honorable William D. Stiehl Filed Pursuant to 28 U.S.C.A. §§ 144 and 455*** was served on the following persons by depositing a copy of same in an envelope with postage prepaid in the United States Mails in the Post Office in East Alton, Illinois addressed as set out, namely:

Mr. Randy Massey
Assistant U.S. Attorney
Nine Executive Drive, Suite 300
Fairview Heights, Illinois 62208

STOBBS LAW OFFICES

/s/ Illegible
346 W. St. Louis Ave.
East Alton, IL 62024

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	No. 97-30006-WDS
v.	)	
RICKY [sic] WALLACE,	)	
Defendant.	)	

AFFIDAVIT IN SUPPORT OF RECUSAL OF MOTION TO DISQUALIFY

Affiant ***Ricky*** [sic] ***Wallace*** deposes and says:

1. That on August 10, 1998, I was approached by Deputy U.S. Marshals as well as FBI agents for questioning about alleged threats made by me to United States District Judge William Stiehl and DEA agent Darien Rentfro.

2. That on Wednesday, August 12, 1998 I was transferred by Order of Court to Carbondale, Illinois for a polygraph examination.

3. Throughout the interview I repeatedly indicated that I did not threaten Judge Stiehl directly or indirectly and did nothing to carry out any sort of harm to Judge Stiehl.

4. I was informed by my counsel John O'Gara that Judge Stiehl has been told that threats were made, but that the source of the alleged threats was not revealed.

5. I do not believe the Government when it says that Judge Stiehl was not told that I was the source of the threats, and since August 12, 1998, this belief has been cemented in my mind.

6. I do not feel that an individual sitting in Judge Stiehl's shoes would give me a fair trial or sentencing because of this threat and I think that he should be disqualified from hearing anything about my case.

7. I have told my attorney John J. O'Gara, Jr. that under no circumstances will I waive this issue of disqualification and have directed him to proceed with this Motion.

8. I believe that the individuals who claim that I made these threats were working with the Government and I believe that these individuals will attempt to make their cooperation known to judges in this District in return for leniency at sentencing.

9. Furthermore, I am concerned that because I was the source of the investigation into the purported threat and because the case file in my case contains Orders for Temporary Custody Transfers of myself and three other individuals that a reasonable person in Judge Stiehl's position would conclude that I was the one who made the threats, and this could cloud Judge Stiehl's bias against me and would bring into question his impartiality at my trial or sentencing.

FURTHER AFFIANT SAYETH NAUGHT:

/s/ Ricky [sic] B. Wallace
RICKY [sic] WALLACE

STATE OF ILLINOIS)
) SS
COUNTY OF PERRY)

Subscribed and sworn to before me this 2nd day of October, 1998.

OFFICIAL SEAL

Lisa Chapman Zettler
Notary Public, State of Illinois
My Commission Expires 01/15/99

/s/ Lisa Chapman-Zettler
Notary Public

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	No. 97-30006-WDS
v.	)	
LINDA SUE ADAMS,	)	
Defendant.	)	

AFFIDAVIT IN SUPPORT OF RECUSAL OF MOTION TO DISQUALIFY

Affiant ***Linda Adams*** deposes and says:

1. Ricky [sic] Wallace and I have been together off and on for over ten years and I am presently raising his son Dustin.

2. In August of 1998, I became aware that a "hit" had been put out on Judge Stiehl's life and that Ricky [sic] Wallace was allegedly the person behind this threat.

3. I never believed that Ricky [sic] had anything to do with this, but the fact that Judge Stiehl knew of this threat makes me believe that he would not be able to give me a fair trial or sentencing due to the fact that I am so close to Ricky [sic] and a co-Defendant in this case.

4. My attorney sent to me the Orders for Temporary Custody Transfer which were entered on August 12, 1998 and I have no doubt that once Judge Stiehl saw these in the file that he would have been able to know that Ricky [sic] was allegedly behind these threats, because if he were

told the threats were made and then saw these Temporary Transfer Orders a reasonable person would have concluded who was being accused of making the threats.

5. I do not want to waive the disqualification of Judge Stiehl and I have told my attorney John Stobbs to file a Motion requesting that Judge Stiehl either remove himself or be removed from my case, because I do not feel he will give me a fair trial or sentencing.

6. The people who told the Government that Ricky [sic] had threatened Judge Stiehl's life are going to bring up in their sentencing hearings that they have fully cooperated with the Government to the extent of making known an alleged threat on a District Judge's life and because of this and the above matters I do not believe Judge Stiehl can be a fair and impartial judge.

FURTHER AFFIANT SAYETH NAUGHT:

/s/ Linda Sue Adams
LINDA SUE ADAMS

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

Subscribed and sworn to before me this 1 day of October, 1998.

OFFICIAL SEAL
JEAN M. NASELLO
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 3-17-2001

/s/ Jean M. Nasello
Notary Public

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	No. 97-30006-WDS
v.	)	
RICKY [sic] WALLACE and LINDA SUE ADAMS,	)	
Defendant.	)	

ATTORNEYS' COMPLIANCE WITH 28 U.S.C. § 144

Comes now attorney John J. O'Gara, Jr. and John D. Stobbs II, representing Ricky [sic] Wallace and Linda Adams respectively and in compliance with 28 U.S.C. § 144 certify that the attached Motion is made in good faith and has been filed after being directed to do so by the respective clients.

RICKY [sic] WALLACE

BY: /s/ John J. O'Gara, Jr.
O'GARA LAW OFFICES
Attorney for Defendant
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(618)234-2788
FAX: (618)234-0670

LINDA SUE ADAMS
STOBBS LAW OFFICES
BY: /s/ John D. Stobbs II
John D. Stobbs II,
NO. 06206358
Attorney for Defendant
346 West St. Louis
Avenue
East Alton, Illinois 62024
Telephone: (618)259-7789
FAX: (618)259-4145

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	No. 97-30006-WDS
vs.	)	(Filed Aug. 12, 1998)
RICKEY WALLACE,	)	
Defendant.	)	

ORDER FOR TEMPORARY CUSTODY TRANSFER

Upon application of the United States of America, by W. Charles Grace, United States Attorney for the Southern District of Illinois, and Randy G. Massey, Assistant United States Attorney, for an Order of Temporary Custody Transfer of STEVE ROSEN from the United States Marshal of this District of Special Agent Dick Egelston, Federal Bureau of Investigation and the Court, having examined the Motion and being fully advised in the premises, finds that the Motion should be granted.

Therefore, it is **ORDERED, ADJUDGED and DECREED**, that:

1. From 1:00 P.M. to 9:00 P.M. on August 12, 1998, the United States Marshal of this District shall relinquish custody of STEVE ROSEN to Special Agent Dick Egelston at such time as the government deems necessary, for purposes of interviewing.

2. STEVE ROSEN shall, at such times, remain in custody of Dick Egelston, of the Federal Bureau of Investigation and not be removed from this District.

3. After such temporary custody, STEVE ROSEN, shall forthwith be returned to the custody of the United States Marshal of this District, in the Perry County Jail in Pinckneyville, Illinois.

DATED: 8/12/98

/s/ James L. Foreman
JAMES L. FOREMAN
U.S. District Judge

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	No. 97-30006-WDS
vs.	)	(Filed Aug. 12, 1998)
RICKEY WALLACE,	)	
Defendant.	)	

ORDER FOR TEMPORARY CUSTODY TRANSFER

Upon application of the United States of America, by W. Charles Grace, United States Attorney for the Southern District of Illinois, and Randy G. Massey, Assistant United States Attorney, for an Order of Temporary Custody Transfer of RICKEY WALLACE from the United States Marshal of this District to Special Agent Dick Egelston, Federal Bureau of Investigation and the Court, having examined the Motion and being fully advised in the premises, finds that the Motion should be granted.

Therefore, it is **ORDERED, ADJUDGED and DECREED**, that:

1. From 1:00 P.M. to 9:00 P.M. on August 12, 1998, the United States Marshal of this District shall relinquish custody of RICKEY WALLACE to Special Agent Dick Egelston at such time as the government deems necessary, for purposes of interviewing.

2. RICKEY WALLACE shall, at such times, remain in custody of Dick Egelston, of the Federal Bureau of Investigation and not be removed from this District.

3. After such temporary custody, RICKEY WALLACE, shall forthwith be returned to the custody of the United States Marshal of this District, in the Perry County Jail in Pinckneyville, Illinois.

DATED: 8/12/98

/s/ James L. Foreman
JAMES L. FOREMAN
U.S. District Judge

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
- Plaintiff,	)	No. 97-30006-WDS
vs.	)	(Filed Aug. 12, 1998)
RICKEY WALLACE,	)	
Defendant.	)	

ORDER FOR TEMPORARY CUSTODY TRANSFER

Upon application of the United States of America, by W. Charles Grace, United States Attorney for the Southern District of Illinois, and Randy G. Massey, Assistant United States Attorney, for an Order of Temporary Custody Transfer of ROY MUELLER from the United States Marshal of this District to Special Agent Dick Egelston, Federal Bureau of Investigation and the Court, having examined the Motion and being fully advised in the premises, finds that the Motion should be granted.

Therefore, it is **ORDERED, ADJUDGED and DECREED**, that:

1. From 1:00 P.M. to 9:00 P.M. on August 12, 1998, the United States Marshal of this District shall relinquish custody of ROY MUELLER to Special Agent Dick Egelston at such time as the government deems necessary, for purposes of interviewing.

2. ROY MUELLER shall, at such times, remain in custody of Dick Egelston, of the Federal Bureau of Investigation and not be removed from this District.

3. After such temporary custody, ROY MUELLER, shall forthwith be returned to the custody of the United States Marshal of this District, in the Perry County Jail in Pinckneyville, Illinois.

DATED: 8/12/98

/s/ James L. Foreman
JAMES L. FOREMAN
U.S. District Judge

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	No. 97-30006-WDS
vs.	)	(Filed Aug. 12, 1998)
RICKEY WALLACE,	)	
Defendant.	)	

ORDER FOR TEMPORARY CUSTODY TRANSFER

Upon application of the United States of America, by W. Charles Grace, United States Attorney for the Southern District of Illinois, and James M. Cutchin, Assistant United States Attorney, for an Order of Temporary Custody Transfer of KENNETH CRONIN from the United States Marshal of this District to Special Agent Dick Egelston, Federal Bureau of Investigation and the Court, having examined the Motion and being fully advised in the premises, finds that the Motion should be granted.

Therefore, it is **ORDERED, ADJUDGED and DECREED**, that:

1. From 1:00 P.M. to 9:00 P.M. on August 12, 1998, the United States Marshal of this District shall relinquish custody of KENNETH CRONIN to Special Agent Dick Egelston at such time as the government deems necessary, for purposes of interviewing.

2. KENNETH CRONIN shall, at such times, remain in custody of Dick Egelston, of the Federal Bureau of Investigation and not be removed from this District.

3. After such temporary custody, KENNETH CRONIN, shall forthwith be returned to the custody of the United States Marshal of this District, in the White County Jail in Carmi, Illinois.

DATED: 8/17/98

/s/ James L. Foreman
JAMES L. FOREMAN
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	CRIMINAL NO.
v.	)	No. 97-30006-WDS
RICKEY WALLACE and LINDA S. ADAMS,	)	
Defendant.	)	

GOVERNMENT'S RESPONSE TO DEFENDANT'S JOINT MOTION FOR DISQUALIFICATION OR RECUSAL

The United States of America, through its attorneys, W. Charles Grace, United States Attorney for the Southern District of Illinois, and Randy G. Massey and Suzanne M. Garrison, Assistant United States Attorneys, states as follows:

INTRODUCTION

Citing 28 U.S.C. §§ 144 and 455(a), defendants have filed a joint motion asking Judge Stiehl to recuse himself from this case, due to Judge Stiehl's alleged bias against them. As grounds for this motion, defendant Wallace's affidavit states: 1) That he was questioned by agents about alleged threats he made against Judge Stiehl and the DEA case agent; 2) that Judge Stiehl knew that threats against him were made, but that he was unaware of the source; however, 3) given the filing of three Motions for Temporary Custody, "a reasonable person in Judge

Stiehl's position would conclude that [Wallace] was the one that made the threats." Defendant Linda Adams' affidavit invokes a novel theory of bystander bias, alleging that as the occasional paramour of defendant Wallace, she is in the fallout zone and will not receive fair treatment from Judge Stiehl.

This motion smacks of forum shopping. The suggestion that Judge Stiehl speculated about the motivations behind routine motions for temporary custody orders and, in a quantum leap of logic, concluded that Wallace was the source of threats against him is patently unbelievable. After all, none of the Motions for Temporary Custody set forth any reason for the request for temporary custody, other than a need for "interviewing." Judge Stiehl would have no reason to conclude that Wallace was the alleged source of threats *until Wallace himself filed his affidavit identifying himself as the suspected culprit.* The source of their own misery, Wallace and Adams are akin to children who kill their parents and then throw themselves on the mercy of the court because they are orphans. The joint motion should be denied.

LEGAL PRINCIPLES

Section 144

United States v Balistrieri sets forth the applicable legal standard for a motion to recuse filed pursuant to 28 U.S.C. § 144[1], explaining as follows:

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[1] Section 144 reads in its entirety: Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is

> Section 144 . . . requires a judge to recuse himself if a party files a timely and sufficient affidavit that the judge has 'a personal bias or prejudice' against him. The law is clear that in passing on the legal sufficiency of the affidavit, the judge must assume that the factual averments it contains are true, even if he knows them to be false. An affidavit is sufficient if it avers facts that, if true, would convince a reasonable person that bias exists. The factual averments must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment. They must not, however, be mere conclusions, opinions, or rumors. They must be stated with particularity, and must be definite as to times, places, persons, and circumstances. The factual everments must show that the bias is personal rather than judicial, and that it stems from an extrajudicial source – some source other than what the judge has learned through participation in the case.

Balistrieri, 779 F.2d 1191, 1199 (7th Cir. 1985) (internal citations omitted). *Balistrieri* explains that because the

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pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

judge is required to assume the facts stated in the affidavit are true, the statute is heavily weighed in favor of recusal. *Balistrieri*, 779 F.2d at 1199. However, recognizing the potential for abuse, courts have recognized that the statute is to be strictly construed so that a party seeking recusal bears a heavy burden. *Id.*

Section 455

Title 28, United States Code, Section 455 is the comprehensive federal recusal statute. Defendants contend that Judge Stiehl should recuse himself under § 455(b)(1), due to "personal bias or prejudice." The phrase "personal bias or prejudice" echoes the language of § 144, and the phrase has the same meaning in both statutes. *Balistrieri*, 779 F.2d at 1202. However, § 455(b)(1) dispenses with the requirement that the judge must take all the factual averments of the affidavit as true; accordingly, the judge is free to make credibility determinations, assign to the evidence what he believes to be its proper weight, and to contradict the evidence with facts drawn from his own personal knowledge. *Id.* The standard of proof under § 455 is the same as for § 144: whether a reasonable person would be convinced that the judge is biased. *Id.* Section 455 clearly contemplates that decisions with respect to disqualification should be made by the judge sitting in the case, and not by another judge. *Id.* at 1202-03.

The negative bias or prejudice from which the law of recusal protects a party must be grounded in some personal animus or malice that the judge harbors against him, of a kind that a fair-minded person could not

entirely set aside when judging certain persons or causes. *Id.* at 1201.

APPLICATION OF PRINCIPLES

The basis of the motion for recusal turns upon an assertion, made by defendant Wallace in his affidavit, that defendant Wallace was accused of making threats against Judge Stiehl. This particular piece of information does not stem from an extrajudicial source. Rather, through participation in this case and a review of Wallace's own affidavit, Judge Stiehl learned from Wallace that Wallace was said to be the source of the threats. Notably, upon information and belief, at no point has anyone confirmed or established that Wallace was the source of any alleged threats.

The linchpin of Wallace's argument is as follows:

> "I am concerned that because I was the source of the investigation into the purported threat and because the case file in my case contains Orders for Temporary Custody Transfers of myself and three other individuals that a reasonable person in Judge Stiehl's position would conclude that I was the one who made the threats, and this could cloud Judge Stiehl's bias against me and would bring into question his impartiality at my trial or sentencing."

Wallace's argument fails to recognize that Motions for Temporary Custody are routine. The United States Attorney's Office files dozens of them every month, using a standard form which does not disclose the subject matter of the debriefing which will occur during the temporary custody transfer. A reasonable person would recognize

that the United States District Court for the Southern District of Illinois is a busy place. Despite Mr. Wallace's vision of a sleepy hollow where federal district judges speculate about the motivation behind motions for temporary custody, a reasonable person would conclude that the Court does not have the inclination or luxury to engage in such daydreaming. Wallace has set forth nothing more than a subjective conclusion, which as a matter of law is not sufficient to form the basis for disqualification under the objective test set forth above. Adams' affidavit, consisting of a subjective conclusion based upon someone else's subjective conclusion (and founded on hearsay to boot), is even further off the mark.

CONCLUSION

Defendants's joint motion consists of mere opinion, wild speculation, bald allegation, and the heaping of inference upon inference. Notably, neither defendant has pointed to any pretrial order as evidence of bias or prejudice, despite the rather considerable volume of motions which have been filed to date. Defendants have not met their burden of establishing that a reasonable person would be convinced that Judge Stiehl is biased. Accordingly, insofar as defendants invoke § 455, Judge Stiehl should enter an order denying the motion to disqualify. Insofar as defendants invoke § 144, Judge Stiehl should deny the motion on the grounds that the affidavits are insufficient, thus making it unnecessary to assign the motion to another judge for hearing. *See, United States v. Azhocar,* 581 F.2d 735 (9th Cir.) *cert. denied,* 99 S.Ct. 1213, 440 U.S. 907, 59 L.Ed.2d 454 (1978) (Challenged judge could rule on legal sufficiency of affidavit and was not

required to assign recusal motion to another judge for hearing).

WHEREFORE, the United States of America asks this Court to deny all aspects of the defendants' joint motion for disqualification or recusal without hearing.

Respectfully submitted,

W. CHARLES GRACE
United States Attorney

/s/ Randy G. Massey
RANDY G. MASSEY
Assistant United States Attorney

/s/ Suzanne M. Garrison
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	CRIMINAL NO.
v.	)	No. 97-30006-WDS
RICKEY BRANDON WALLACE, and LINDA S. ADAMS,	)	
Defendant.	)	

PROOF OF SERVICE

The undersigned hereby certifies that he/she is an employee in the Office of the United States Attorney for the Southern District of Illinois and is a person of such age and discretion as to be competent to serve papers.

That on October 21, 1998, he/she served a copy of the attached:

GOVERNMENT'S RESPONSE TO
DEFENDANTS' JOINT MOTION FOR
DISQUALIFICATION OR RECUSAL

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and

contents in the United States Mail at Nine Executive Drive, Fairview Heights, IL 62208.

ADDRESS(ES):

John J. O'Gara, Jr.
6 East Washington
Belleville, IL 62220

Attorney for Defendant Wallace

John D. Stobbs II
346 West St. Louis Avenue
East Alton, Illinois 62024

Attorney for Defendant Adams

/s/ Joyce A. Voss

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, PLAINTIFF, v.s. RICKEY WALLACE & LINDA ADAMS, DEFENDANTS.	No. 97-30006-WDS ***TO BE FILED UNDER SEAL*** (Filed Oct. 23, 1998)

ANSWER TO GOVERNMENT'S RESPONSE TO DEFENDANTS' JOINT MOTION TO DISQUALIFY OR SUBSTITUTE JUDGE

Generally, it is not necessary to respond to the opposition's response to any Motion, but due to the fact that the Government's response to the Defendants' Joint Motion for Recusal or Disqualification misstates the facts and law and is so macabre in its acerbic and sarcastic tone, that in this instance an answer is warranted.

I. Investigation

1. The Government infers that Judge Stiehl, target of the suspected assassination plot was provided with minimal information by agents assigned to protect him. To conclude that a federal judge, who is the target of a supposed assassination would not be fully briefed on the threat against him so that he might take the necessary steps to protect himself and his family is contrary to common sense, as well as principles of security and criminal investigation.

It is the Defendants' position that Judge Stiehl had to be told of the alleged assassination plot, and that is why Defendants state in their totally sufficient affidavits that they do not believe the Government when it says Judge Stiehl was not told of the alleged assassination plot.

The Defendants filed their Motion because the Government began an investigation involving allegations that Mr. Wallace was the source of an assassination plot against Judge Stiehl. In the Government's vitriolic response it claims that Judge Stiehl would have no reason to conclude that Mr. Wallace was the source of the threat until Mr. Wallace himself filed the affidavit in the recusal motion, which is an absurd position to take considering the foregoing as well as the Transfer Orders filed during the same time frame signed by another Judge.

In all likelihood this matter never would have been brought up, but for the fact that the Government filed numerous Motions for Temporary Custody in this case. This case is assigned to Judge Stiehl, and the Custody Transfers were signed by Senior U.S. District Judge Foreman. Surely, the Government is not saying that it is commonplace to have another District Judge sign Temporary Transfer Orders, especially when an alleged assassination is in the offing and the alleged assassin and his co-Defendant have matters pending before the District Judge to whom the case is assigned.

What is interesting is that the metaphor used by the Government about children killing their parents is really applicable to it as well since the Government is the one who has brought the problem on itself. Instead of admitting that it made a mistake by filing the Transfer Orders

in the instant case rather than opening a miscellaneous file with another case number in Benton, the Government instead attacks the Defendants which is an untenable position.

It is interesting that the Government's indifference to this problem was not limited to the Transfer Orders, since the caption to its response indicates that it was not filed under seal.

2. The fact remains that others who cooperated with the Government in the investigation of the alleged assassination plot will ask for leniency at a sentencing hearing, and for other benefits including Rule 35 reductions. The Government's silence on this point also shows that if Judge Stiehl were unaware that Mr. Wallace was the "mastermind" behind the assassination plot, then certainly at a sentencing of a Government "snitch" Judge Stiehl or another judge in the building would be aware of Mr. Wallace's alleged participation in this assassination plot.

3. To borrow the Government's sarcastic analogy, Mr. Wallace does not have to pretend that the "sleepy hollow federal district court" would forever be unaware that Rickey Wallace was the alleged source of threats. A reasonable person would conclude that Judge Stiehl knows, or before deciding Mr. Wallace's fate would know that Mr. Wallace was the source of the alleged threats.

II. Legal Principles

4. The Government has alleged that the motion "smacks of forum shopping." To the extent that the Government is claiming that the motion filed is for the motive of merely trying to get another judge for some tactical or whimsical reason, undersigned counsel is deeply offended at this thinly veiled attack on their integrity.

5. It is astonishing that in its response, the Government shows a total disregard for established legal principles regarding Sections 144 and 455(a) as they relate to the facts in this case.

While the Government is generally correct in its analysis of Section 144 legal principles, the claims it makes on Section 455 allegations are patently wrong since the standard for disqualification under Section 455 is much less strict than Section 144. While Section 144 allegations must be sufficient to convince a reasonable person that bias exists, under Section 455(a) the allegations must show only that a reasonable person would harbor doubts about the judge's impartiality. *Phillips v. Joint Legislative Committee on Performance and Expenditure Review*, 637 F.2d 1014, 1019 n.6 (5th Cir. 1981) *cert. denied*, 456 U.S. 960 (1982), *United States v. Greenspan*, 26 F.3d 1001 (10th Cir. 1994).

6. Furthermore, the Government claims that under Section 455 the bias or prejudice must be grounded in personal animus or malice that the judge harbors against a Defendant, of a kind that a fair minded person could not entirely set aside when judging certain persons or causes. This, or course is not the standard of Section 455 and is a misstatement of the law. As the *Greenspan* court

stated, the standard is whether a reasonable person *could* question the court's impartiality.

7. The crucial issue is and always will be what a ***reasonable person*** would perceive based on the affidavits filed by Defendants, and there is no doubt whatsoever that said reasonable person would think Judge Stiehl could not be fair to the Defendants. As the *Greenspan* decision stated "even if this judge were one of those remarkable individuals who could ignore the personal implications of such a threat, the public could reasonably doubt his ability to do so." *Greenspan* at 26 F.3d 1007.

8. The Government's argument regarding "extra-judicial source," also fails since just as in *Greenspan* the case at bar involves an alleged uncommunicated threat and as such the threat here is properly characterized as an "extrajudicial source." *Greenspan* at 26 F.3d 1006. Despite the government's claim that the motion raising this issue is not an extrajudicial source, it is clear that the reason for the motion in the first-place, the investigation of the threats, is the extrajudicial source. As in *Greenspan*, no inference is alleged or could be made that the alleged threats are for the purpose of obtaining a different judge. The threats were allegedly made in a jail and not in connection with any judicial proceeding in this case. The Government wants to blame the motion for this situation rather than address the investigation of the alleged threats, precipitated by the Government, upon the word of other jail inmates who now hope to gain some benefit.

9. The investigation into the alleged assassination plot continues, *Mr. Wallace could be indicted at any time*, and the affidavits clearly indicate that Mr. Wallace was

the focal point of the investigation and that other individuals who claimed he made the threats were cooperating with the Government and will wish to benefit from this cooperation at their sentencing hearing. As Section 144 notes, the facts set out in affidavits must be accepted as true, only the legal sufficiency of the allegations can be ruled upon and it must aver facts which would convince a reasonable person that bias exists.

10. The Government perverts the contents of Defendants' affidavits and through its vitriol attempts to make the Defendants say something which in fact was never said. The most glaring example of this misstatement of fact is the assertion in its response which states that Defendant Wallace's *affidavit* states: " . . . (2) that Judge Stiehl knew that threats against him were made but that he was unaware of the source;" when in fact Defendant Wallace's *affidavit* states: "5. I do not believe the Government when it says that Judge Stiehl was not told that I was the source of the threats and since August 12, 1998 this belief has been cemented in my mind."

Another misstatement is when the Government's response states: " . . . (3) given the filing of three Motions for Temporary Custody, a reasonable person in Judge Stiehl's position [Wallace] was the one who made the threats." In fact, an examination of the *affidavits* filed by Defendants fails to disclose any such language.

11. The Government's claim that the affidavits provided in this case state subjective conclusions and are insufficient to form the basis for disqualification ignores the standard under Section 144 of convincing a reasonable person that bias exists and certainly the governments

response fails to recognize the standard in Section 455 and in *Greenspan* that a reasonable person would harbor doubts about the impartiality of the court.

12. As in *In re: Jafree*, 741 F.2d 133 (7th Cir. 1984), where there is a likelihood of bias or appearance of bias such that the judge is unable to maintain the balance between vindicating the interests of the court and the interests of the accused, recusal is required. If Mr. Wallace's alleged conduct and as the Government argues, the filing of the Motion itself can be considered contumacious conduct, under *Jafree*, the court ***must*** recuse itself.

III. Conclusion

Judge Stiehl enjoys an impeccable reputation for fairness and impartiality, which Counsel is aware of firsthand, and understandably this motion is filed with great reluctance. The undersigned agree that Judge Stiehl is, as envisioned in *Greenspan*, " . . . one of those remarkable individuals who could ignore the personal implications of such a threat," but the undersigned likewise agree with *Greenspan* that "the public could reasonably doubt his ability to do so," and the undersigned fail to see the reasonableness of placing Judge Stiehl in that unenviable position.

The affidavits in this case, the reasonable inferences to be made here and the obvious position of Mr. Wallace as having been under strong suspicion of plotting to assassinate the judge in this case all combine to warrant that under Section 144 another judge should conduct a hearing to determine whether a reasonable person would be convinced that the judge at the center of an alleged

assassination plot can be fair to the man accused of contracting to murder him. In addition, the court must conclude that a reasonable person would harbor doubts that a judge, supposedly targeted for assassination would be impartial. Under either applicable statute, Judge Stiehl should recuse himself or this matter should be referred to Chief Judge J. Phil Gilbert to be reassigned to another District Judge.

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 23rd day of October, 1998, a copy of the attached ***Defendants' Joint Answer to the Government's Response to Defendants' Joint Motion to Disqualify or Substitute Judge*** was served on the following persons by depositing a copy of same in an envelope with postage prepaid in the United States Mails in the Post Office in East Alton, Illinois addressed as set out, namely:

Mr. Randy Massey
Assistant U.S. Attorney
Nine Executive Drive, Suite 300
Fairview Heights, Illinois 62208

STOBBS LAW OFFICES

/s/ John Stobbs
346 W. St. Louis Ave.
East Alton, IL 62024

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	No. 97-30006-WDS
v.	)	(Filed March 2, 1999)
RICKEY WALLACE and LINDA SUE ADAMS,	)	
Defendant.	)	

NOTICE OF FILING

Comes now Defendants Rickey Wallace and Linda Adams, by their respective attorneys, John J. O'Gara, Jr. and John D. Stobbs II, and hereby give notice that they are filing this date an Affidavit dated February 12, 1999 from Assistant Federal Public Defender Andrea Smith, and that said Affidavit is in support of Defendant's Joint Motion for Disqualification or Recusal of the Honorable William d. Stiehl Filed Pursuant to 28 U.S.C.A. §§ 144 and 455.

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 2nd day of March, 1999, a copy of the attached ***Notice of Filing*** was served on the following persons by depositing a copy of same in an envelope with postage prepaid in the United States Mails in the Post Office in East Alton, Illinois addressed as set out, namely:

Mr. Randy Massey
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Fairview Heights, Illinois 62208

STOBBS LAW OFFICES

Jean Nasillo
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East Alton, IL 62024

AFFIDAVIT

I, Andrea L. Smith, hereby state under oath the following:

1. I am an Assistant Federal Public Defender in the Southern District of Illinois and was attorney of record for Kenneth R. Cronin in the case of ***United States v. Kenneth R. Cronin,*** CR-98-40072-GPM.

2. On August 6, 1998, my client Kenneth Cronin called me with certain information that he wished to provide the government, having already signed a proffer letter and indicated to the government that he wanted to proffer about his drug charges. This August 6th information revolved around a fellow cellmate at the Perry County Jail at Pinckneyville, Illinois named Ricky [sic] Wallace. Cronin informed me that Ricky [sic] Wallace had made statements to him concerning the fact that he was going to have Judge Stiehl "taken out" and some other information concerning Ricky [sic] Wallace's attorney who was allegedly providing Wallace with controlled substances at the Perry County Jail.

3. I prepared a letter containing the information and faxed it to Assistant U.S. Attorney Jim Cutchins at the Benton U.S. Attorney's Office who was the prosecutor in Mr. Cronin's case. Assistant U.S. Attorney Jim Cutchins immediately responded and we set up a meeting for the next day, August 7, 1998, for FBI agents to meet with my client and me to debrief him on these allegations.

4. Prior to driving down to Perry County Jail to meet with my client and the FBI agents on August 7, 1998, I had a number of matters to handle in front of the

courts in East St. Louis, Illinois. Looking at my 1998 calendar, I see that I had something scheduled for 9 a.m., and this appears to be correct. For I recall going over to the Federal Courthouse early and running into Deputy U.S. Marshal Bill Pressin in the hallway on the first floor of the Courthouse. Pressin told me that he was on his way to brief Judge Stiehl concerning the allegations of my client Cronin concerning the threats on Judge Stiehl's life. Bill Pressin asked me for some more details, he had already been given a copy of my letter to Jim Cutchins of the day before. I recall Pressin telling me that, of course, the United States Marshals always have to immediately tell the judges any kind of information that involve their security.

5. We both then went on our ways and later in the afternoon on August 7, 1998, I met with the FBI agents and Mr. Cronin, when he elaborated more fully on what Ricky [sic] Wallace said. Cronin later that evening went back into the cell wired to tape any incriminating remarks by Wallace.

5. I have never discussed this issue with Judge Stiehl though I did make mention of it at Kenneth Cronin's sentencing in front of Judge Murphy on November 13, 1998, and I have had discussions with AUSAs Jim Cutchins and Randy Massey about this matter.

FURTHER AFFIANT SAYETH NOT.

Date: 2/12/99

Andrea L. Smith
ANDREA L. SMITH
AFFIANT

Subscribed and sworn to before me this 12th day of February 1999.

Robin Butler
NOTARY PUBLIC
My Commission expires:

"OFFICIAL SEAL"
ROBIN BUTLER
NOTARY PUBLIC,
STATE OF ILLINOIS
Madison County
My Commission Expires
Dec. 10, 2001

[I-44] * * *

A The attorney at the pre-trial conference, it came from him. His name was Lawrence Hale.

Q What information did you receive?

A He stated that he would be very surprised if Ubaldo Diaz took the stand to testify against Linda Adams.

Q You don't know where he got the information?

A No, sir, I do not.

Q When you received that information, what did you do?

A I immediately contacted Diaz's attorney, William Shirley.

Q After contacting him, what did you do?

A I arranged to have a meeting between Mr. Shirley, Mr. Diaz and myself.

Q When did that meeting take place?

A The afternoon of April 27th.

Q That same day?

A Yes.

Q Did you interview Mr. Diaz at that time?

A Yes, I did.

Q Did you ask him about his testimony?

A Yes.

Q And what did he tell you?

A He told me he was reluctant to testify.

Q Did he tell you why he was reluctant to testify?

A Yes.

Q What did he say?

[I-45] A He stated his family had been contacted on two occasions by Rickey Wallace and Rickey Wallace's attorney, Clifford Schwartz. During those meetings and following phone calls, his family was told if Ubaldo Diaz testified against Rickey Wallace, harm would come to the Diaz family.

Q Who had related that information to Ubaldo?

A Both his sister Isabella and his father.

Q By telephone?

A Yes.

Q Okay. Does Ubaldo speak English?

A Yes.

Q After receiving that information from Ubaldo, what did you do?

A I then conducted interviews of the family members.

Q Which family members did you conduct interviews of?

A Isabella Diaz and Ismael Diaz.

Q You heard Isabella testify here today?

A Yes.

Q Is what she testified to here today the gist of what she told you?

A Yes.

Q When she talked to you originally on the phone, did she tell you when the contacts to her had been made?

A Yes.

Q And what did she say?

* * *

[I-52] Q All right. The offer was made by whom?

A Rickey Wallace and his attorney, Clifford Schwartz.

Q When?

A On two occasions in December of 1997 and January of 1998.

Q Where?

A In person in Rio Grande Valley, Texas.

Q In December of 1997 and January of 1998?

A Yes.

Q And it is unclear to me at evidently the same time, $50,000, or I gather you are talking about now $100,000. You are talking about $50,000 to the sister and $50,000 to the father?

A Yes, sir.

Q You are talking about $100,000?

A Yes.

Q And at the same time that $100,000 was offered, they were threatened with physical violence?

A Yes, sir.

Q As you interpreted it, did one come before the other? Did the threats come first or did the money come first?

A The money came first.

Q And then the threats came?

A Yes.

Q Did you identify the threats as to what would be done?

A I don't understand the question, sir.

[I-53] Q Was there legs to be cut off, their head to be cut off or were they to be shot or what kind of threats were made?

A It was just generalized as harm was the word that was used.

Q And then you subsequently had telephone conversations with the young lady who just testified?

A With Miss Isabella Diaz.

Q When did you first contact her?

A I believe it was the evening of April 27th.

Q That same day?

A Yes, sir.

Q By phone?

A Yes.

Q And then when did you first talk to her in person?

A Yesterday.

Q Yesterday?

A Yes.

Q How many telephone conversations did you have with her?

A Approximately four.

Q The first conversation was on the 27th. When was the next conversation?

A On the 28th.

Q And when was the next conversation?

A Probably May 2nd.

Q When was the fourth conversation?

* * *